

Sixth Appellate District

San Jose, California

MONDAY, DECEMBER 13, 2004

H025937 BARBOUNIS v. SASCO ELECTRIC

The judgment is affirmed. Respondent shall have its costs on appeal. Respondent's motion for sanctions is denied. (not published)

(McAdams, J.; We concur: Bamattre-Manoukian, Acting P.J., Mihara, J.)

Filed December 13, 2004

H027097 PEOPLE v. NORRIS

The judgment is affirmed. (not published)

(Bamattre-Manoukian, Acting P.J.; We concur: Mihara, J., McAdams, J.)

Filed December 13, 2004

H027468 PEOPLE v. RODRIGUEZ

The judgment is affirmed. (not published)

(Mihara, J.; We concur: Bamattre-Manoukian, Acting P.J., McAdams, J.)

Filed December 13, 2004

H027018, H027275 PEOPLE v. HALL

The judgment in case No. CC268084 is affirmed. The judgment in case No. CC271086 is affirmed. (not published)

(Bamattre-Manoukian, Acting P.J.; We concur: Mihara, J., McAdams, J.)

Filed December 13, 2004

H027021 PEOPLE v. CORTEZ

The judgment is affirmed. (not published)

(Walsh, J.*; We concur: Rushing, P.J., McAdams, J.)

Filed December 13, 2004

(*Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)

Sixth Appellate District

San Jose, California

Monday, December 13, 2004 (continued)

H026926 PEOPLE v. LONGLEY

(Filed order modifying opinion.) The petition for rehearing is denied. There is no change in judgment. (not published) (Premo, Acting P.J.; We concur: Bamattre-Manoukian, J., Walsh, J.*)

Filed December 13, 2004

(*Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)

H026797 ROLAND v. SERVICE RENT-A-CAR

The order is affirmed. (not published) (Elia, J.; We concur: Rushing, P.J., Mihara, J.)
Filed December 13, 2004

TUESDAY, DECEMBER 14, 2004

The Court met in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California. Present: Premo, Acting P.J.; Bamattre-Manoukian, J.; Walsh, J.*; and Jane Valdez Flor, Deputy Clerk.

(*Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)

H026165 PEOPLE v. GREENE

Cause called and argued by Daniel Byrne appearing for Appellant and by Catherine McBrien, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H026086 PEOPLE v. CASTILLO

Cause called and argued by Joseph Courtney Shevelson appearing for Appellant and by Ann P. Wathen, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H027116 GARDELLA, SR. v. ALEXANDER

Cause called and argued by Stephen Gardella, Sr., Appellant appearing in propria persona and by Dennis Brooke Lippitt appearing for Respondent. Cause ordered submitted. Court is adjourned.

Sixth Appellate District

San Jose, California

Tuesday, December 14, 2004 (continued)

H026296 PEOPLE v. MENDOZA

The judgment is affirmed. (not published)
(Rushing, P.J.; We concur: Premo, J., Elia, J.)
Filed December 14, 2004

H026605 MOORE, et al. v. STATE OF CALIFORNIA

There was a triable issue of fact concerning whether the State lost design immunity with respect to its failure to provide a highway median barrier at the location of the subject accident. Accordingly, it was improper to grant summary judgment, and the judgment is hereby reversed. Each party shall bear his/its respective costs on appeal. (not published)
(Walsh, J.*; We concur: Rushing, P.J., Mihara, J.)
Filed December 14, 2004
(*Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)

H022727 PEOPLE v. DOMINGUEZ

The judgment is affirmed with respect to count 3 (rape).
The judgment is reversed with respect to counts 1 (murder) and 2 (kidnapping for rape). Retrial is barred on count 2. (published)
(Rushing, P.J.; We concur: Premo, J., Elia, J.)
Filed December 14, 2004

H025816 PEOPLE v. MARIO C.

The appeal is dismissed (published)
(Rushing, P.J.; We concur: Premo, J., Elia, J.)
Filed December 14, 2004

H026101 SANTA CLARA VALLEY TRANSPORTATION AUTHORITY v. PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

By the Court*:

Respondent's petition for rehearing is denied.
Filed: December 14, 2004

*Before Bamattre-Manoukian, Acting P.J., Mihara, J. and McAdams, J.

H026314 PEOPLE v. PERRY

The judgment is affirmed. (not published)
(Bamattre-Manoukian, Acting P.J.; We concur: Mihara, J., McAdams, J.)
Filed December 14, 2004

Sixth Appellate District

San Jose, California

Tuesday, December 14, 2004 (continued)

H025863 PEOPLE v. HUGHES et al.

The judgment is reversed. The matter is remanded and the trial court is directed to enter a new judgment reflecting convictions for simple assault, in violation of sections 240 and 241, subdivision (a) and to resentence defendants. (not published)

(Rushing, P.J.; We concur: Premo, J., Elia, J.)

Filed December 14, 2004

WEDNESDAY, DECEMBER 15, 2004

H025534 PEOPLE v. NORMAN

The judgment is reversed. The matter is remanded for a potential retrial on the resisting arrest charge (Pen. Code, § 148, subd. (a)[Count 4]) in Santa Clara County Superior Court Case Number CC239032. If the prosecution chooses not to retry the resisting arrest charge, the trial court shall prepare an amended abstract of judgment in Santa Clara County Superior Court Case Numbers CC240278 and CC239032 that omits "CT 4 (Penal Code 148 (A)(1)" from the list of misdemeanor convictions in the "Other Orders" that are specified in section 11 of the Abstract of Judgment. If the prosecution chooses to retry the resisting arrest charge, the trial court shall resentence defendant after the resisting arrest charge is resolved and shall then prepare a new abstract of judgment in Santa Clara County Superior Court Case Numbers CC240278 and CC239032. In either case, the trial court is directed to forward a certified copy of the revised abstract of judgment to the California Department of Corrections. (not published)

(Mihara, J.; We concur: Bamattre-Manoukian, Acting P.J., Walsh, J.*)

Filed December 15, 2004

(*Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)

H025540 HARTNELL COMMUNITY COLLEGE DISTRICT et al. v. SUPERIOR COURT OF MONTEREY COUNTY; HARTNELL COLLEGE FACULTY ASSOCIATION

The petition for writ of mandate is denied and the temporary stay order is vacated. Each party shall bear its own costs in this original proceeding. (published)

(Rushing, P.J.; We concur: Premo, J., Elia, J.)

Filed December 15, 2004

Sixth Appellate District

San Jose, California

Wednesday, December 15, 2004 (continued)

H027565 In re ALEX D.; SANTA CRUZ HUMAN RESOURCES AGENCY v. MARIA F.

The judgment is reversed, and the matter is remanded to the juvenile court with directions to require the Agency to comply with the ICWA's notification requirement with regard to Alex and to proceed accordingly. (not published)
(Mihara, J.; We concur: Bamattre-Manoukian, Acting P.J., McAdams, J.)

Filed December 15, 2004

THURSDAY, DECEMBER 16, 2004

The Court met in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California. Present: Bamattre-Manoukian, Acting P.J.; Mihara, J.; McAdams, J.; and W. Magsaysay, Deputy Clerk.

H027351 IN RE LEONEL M., A MINOR

Cause called and argued by James Duffy appearing for Appellant and by Martin S. Kaye, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H026026 PEOPLE v. UMBLE

H027197 PEOPLE v. UMBLE

Causes called and argued by Jonathan Grossman appearing for Appellant and by Allen R. Crown, Deputy Attorney General, appearing for Respondent. Causes ordered submitted.

H026351 F. SCOTT SALYER, as Trustee, etc. v. SALYER, et al.

Cause called and argued by Russell Hanlon and Thomas Foley appearing for Appellants and by Myron E. Etienne and by Pamela Wieben appearing for Respondent. Cause ordered submitted. Thereafter, Bamattre-Manoukian, Acting P.J. leaves the bench and Elia, Acting P.J. joins the bench.

H026049 PEOPLE v. CARRASCO

Cause called and argued by Kyle Gee appearing for Appellant and by Rene Chacon, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

Sixth Appellate District

San Jose, California

Thursday, December 16, 2004 (continued)

H026775 McDONNELL v. McBRIDE, et al.

Cause called and argued by Appellants James McBride and Lilli McBride, appearing in propria persona and Respondent John P. McDonnell, appearing in propria persona. Cause ordered submitted. Court recesses until 1:30 p.m.

H027007 PEOPLE v. KUNAU

The clerk of the superior court is ordered to correct the abstract of judgment by changing the reference to Vehicle Code section "11085(a)" to read instead, "10851(a)." The clerk shall forward copies of the corrected abstract of judgment to the Department of Corrections. As modified, the judgment is affirmed. (not published)

(Premo, J.; We concur: Rushing, P.J., Elia, J.)

Filed December 16, 2004

H026313 PEOPLE v. VENTURA

The judgment is modified to give defendant presentence credits of 413 days of actual custody credit plus 206 days of conduct credit for total credits of 619 days. The trial court is directed to amend the abstract of judgment accordingly and to forward a copy thereof to the Department of Corrections. As so modified, the judgment is affirmed. (not published)

(McAdams, J.; We concur: Elia, Acting P.J., Bamattre-Manoukian, J.)

Filed December 16, 2004

H026924 PEOPLE v. LAKE

The probation condition requiring that defendant "not possess or consume alcohol or drugs or go to places where the same are sold or used" is hereby modified to require that defendant "not possess or consume alcohol or drugs and not go to places where he knows drugs are used or sold or alcohol is the major item of sale." As modified, the trial court's probation order is affirmed. (not published)

(Mihara, J.; We concur: Rushing, P.J., Elia, J.)

Filed December 16, 2004

Sixth Appellate District

San Jose, California

Thursday, December 16, 2004 (continued)

H027258 OSORNIO v. WEINGARTEN

(Filed order modifying opinion.) The application of nonparty California Bankers Association for leave to file as amicus curiae a petition for rehearing is denied. There is no change in the judgment. (published)
(Walsh, J.*; We concur: Premo, Acting P.J., Bamattre-Manoukian, J.)

Filed December 16, 2004

(*Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)

H026491 CITY OF SAN JOSE v. WEBSTER

The order is affirmed. (not published)
(Mihara, J.; We concur: Rushing, P.J., Premo, J.)
Filed December 16, 2004

H025030 GONZALES v. CITY OF SAN JOSE; HUANG

The judgment of the trial court is reversed. (not published)
(Rushing, P.J.; We concur: Premo, J., Elia, J.)
Filed December 16, 2004

H026038 PEOPLE v. GANDY

The judgment is affirmed. (not published)
(Rushing, P.J.; We concur: Elia, J., Mihara, J.)
Filed December 16, 2004

The Court reconvened at 1:30 p.m. in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California.
Present: Elia, Acting P.J.; Bamattre-Manoukian, J.; McAdams, J.; and Beth Miller, Deputy Clerk.

H026538 RANA v. SINGH

Cause called. No appearance was made by appellant Harpaul Singh. Robert J. Tennant appeared for Respondent and agreed to submit cause on the briefs. Cause ordered submitted.

Elia, Acting P.J. leaves the bench and Mihara, J. takes the bench.

H026504 THE PEOPLE v. RICHARD G.

Cause called and argued by Pamela Schwartz Cohen appearing for Appellant and by Nancy H. Tung, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

Sixth Appellate District

San Jose, California

Thursday, December 16, 2004 (continued)

H025390 RENAULT & HANDLEY OAKMEAD SOLAR JOINT VENTURE v. APPLIED MATERIALS, INC.

Cause called and argued by Gary E. Weiss appearing for Appellant and by Roderick A. McLeod appearing for Respondent. Cause ordered submitted.

H025624 RENAULT & HANDLEY OAKMEAD SOLAR JOINT VENTURE v. APPLIED MATERIALS, INC.

Cause called and argued by Gary E. Weiss appearing for Appellant and by Roderick A. McLeod appearing for Respondent. Cause ordered submitted. Court adjourns.

H026121 & H027020 PEOPLE v. HERRERA

The judgment and the post-judgment order denying presentence custody credit are affirmed. (not published)
(Rushing, P.J.; We concur: Elia, J., Mihara, J.)
Filed December 16, 2004

H026197 PEOPLE v. HOANG

The judgment is affirmed. (not published)
(Rushing, P.J.; We concur: Premo, J., Elia, J.)
Filed December 16, 2004

H027363 In re ISAIAH C.; DFCS v. VINCENT C.

The order appealed from is affirmed. (not published)
(Rushing, P.J.; We concur: McAdams, J., Walsh, J.*)
Filed December 16, 2004
(*Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)

H025888 PEOPLE v. PASCUA

The judgment is reversed. The trial court is directed to strike that portion of the judgment ordering restitution to Hernon in the amount of \$2,335; to determine the amount of the restitution fine; and to stay the sentence on count two. (not published)
(Mihara, J.; We concur: Rushing, P.J., Premo, J.)
Filed December 16, 2004

Sixth Appellate District

San Jose, California

Thursday, December 16, 2004 (continued)

H026978 TOPSAIL COURT HOMEOWNERS ASSOCIATION v. COUNTY OF SANTA CRUZ, et al.

The order is affirmed. (not published)
(Mihara, J.; We concur: Rushing, P.J., Elia, J.)
Filed December 16, 2004

H027342 In re ALEXANDER S.; HUMAN RESOURCES AGENCY v. MARYLON D.

The order terminating parental rights is affirmed. (not published)
(Bamattre-Manoukian, Acting P.J.; We concur: Mihara, J., McAdams, J.)
Filed December 16, 2004

FRIDAY, DECEMBER 17, 2004

H026041 PEOPLE v. LARA

H026893 PEOPLE v. LARA

The judgment is reversed. The matter is remanded solely for further proceedings on count 21. (not published)
(McAdams, J.; We concur: Elia, Acting P.J., Bamattre-Manoukian, J.)
Filed December 17, 2004

H027156 PEOPLE v. QUEZADA

The judgment of conviction and sentence are affirmed. (not published)
(McAdams, J.; We concur: Rushing, P.J., Walsh, J.*)
Filed December 17, 2004
(*Judge of the Santa Clara County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.)

H027571 PEOPLE v. TRAN

The judgment is reversed. The matter is remanded to the trial court with instructions to vacate its previous order that directed defendant to pay \$1,000 in attorney fees and to conduct a further hearing on the defendant's ability to pay attorney fees. (not published)
(Rushing, P.J.; We concur: Premo, J., Elia, J.)
Filed December 17, 2004

Sixth Appellate District

San Jose, California

Friday, December 17, 2004 (continued)

H023902 PEOPLE v. SERRANO et al.

The judgments on appeal are affirmed. (not published)
(Rushing, P.J.; We concur: Premo, J., Mihara, J.)
Filed December 17, 2004

H026495 PEOPLE v. SULLIVAN

By the Court*:

Appellant's petition for rehearing is denied.
Filed: December 17, 2004

*Before Premo, Acting P.J., and Mihara, J.